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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,696	03/29/2004	Donald Carroll Roe	9533	1358

27752 7590 09/11/2006

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER
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STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/811,696

Applicant(s)

ROE ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 5/1/06 have been fully considered but they are not persuasive. Applicant argues Dobrin does not teach a backsheet having a physical variation measured by a physical property selected from the group consisting at least one of basis weight, thickness, and density. However, as previously discussed, Dobrin discloses microapertured and unapertured regions of the backsheet. The difference in the apertured and unapertured areas would result in at least a difference in density due to the presence of the apertures and presumably a difference in weight as well. Therefore, the rejection is maintained.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8 and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobrin et al. USPN 5571096.

As to claims 1-6, 8, 19, and 20, Dobrin discloses a disposable absorbent article comprising: an absorbent core 28, a liquid permeable topsheet 24, and a liquid impermeable backsheet 26 as claimed. The backsheet of Dobrin has a physical

variation along at least one axis, wherein a physical variation defines a first backsheet zone and a second backsheet zone (Figures 2 and 3). The physical variation is measured by the physical properties of thickness, weight, and density as Dobrin discloses microapertured regions and unapertured regions of the backsheet. The apertured regions have a lower weight, thickness, and density as compared to unapertured regions. Figure 2 shows a physical variation in the lateral axis between zones 76 and 74. However, there is some physical variation in the longitudinal axis as well, which is demonstrated in Figure 3 between the apertured and unapertured regions of zone 76. Dobrin discloses at least one elastomeric element 65 attached to the backsheet as claimed (see col. 12, lines 21-31 where Dobrin incorporates by reference Lawson USPN 4695278 who teaches elastic members attached in an elastically contractible condition col. 7, line 28 through col. 8, line 13). Dobrin shows elastic components in the waist region, which are not present in the crotch regions. Therefore, a given property, such as density and weight differs from an average of the given property of at least one of the waist regions.

As to claim 7, Dobrin incorporates by reference Lawson who teaches curvilinear elastic elements (Lawson col. 8, lines 44-51).

As to claims 11-17, Dobrin teaches a non-uniform backsheet where an outer cover 90 is joined to a central unapertured region, an outer apertured region or both (col. 9, line 46 through col. 10, line 33).

As to claim 18, Dobrin incorporates by reference Lawson who teaches curvilinear elastic elements (Lawson col. 8, lines 44-51).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 9, 10, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobrin USPN 5571096. As to claim 9, Dobrin teaches a backsheet having zones which vary by a physical p and 21, see the rejection of claim 1 supra. Dobrin teaches an elastomeric element attached to the backsheet in an elastically contractible condition, which allows the elements to contract or gather the backsheet in a relaxed state,

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indicating the pathlength of the element is less than a total pathlength of the backsheet where the element is attached. Therefore, the general conditions of this claim are disclosed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the outer cover of Dobrin with the claimed ratios of the present invention, since where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, *In re Aller et al.* 105 USPQ 233.

### ***Conclusion***


7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

September 5, 2006